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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

AVALON DESSELINE JACKSON,

Defendant and Appellant.

B306389

(Los Angeles County
Super. Ct. No. GA039187)

APPEAL from an order of the Superior Court of Los Angeles County, Hector M. Guzman, Judge. Affirmed.

Avalon Desseline Jackson, in pro. per.; and Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Avalon Desseline Jackson appeals from an order denying his petition for writ of habeas corpus in which he contends his sentence of 25 years to life in prison under the “Three Strikes” law violates Penal Code section 1016.8.¹ We affirm.

BACKGROUND

In 1999, a jury found Jackson guilty of possession of cocaine base. (Health & Saf. Code, § 11350.) The jury also found true the special allegations that Jackson had sustained four prior strike convictions (§§ 667, subds. (b)-(i) & 1170.12, subds. (a)-(d)) on September 3, 1982—a first degree residential burglary (§ 459), a robbery (§ 211), a forcible rape (§ 261), and a forcible rape in concert with another (§ 264.1)—and had served a prior prison term within the meaning of section 667.5, subdivision (b) for a May 17, 1993 conviction for possession of a firearm by a felon (former § 12021, subd. (a)). The trial court sentenced Jackson to 25 years to life in prison under the Three Strikes law.

On March 23, 2020, Jackson filed a petition for writ of habeas corpus in the trial court, seeking a recall of his sentence pursuant to newly-enacted section 1016.8. (Stats. 2019, ch. 586, § 1, eff. Jan. 1, 2020.) The statute provides, in pertinent part, that a plea bargain “that requires a defendant to generally waive unknown future benefits of legislative enactments, initiatives, appellate decisions, or other changes in the law that may occur after the date of the plea is not knowing and intelligent.” (§ 1016.8, subd. (a)(4).) Jackson argued in his petition that section 1016.8 requires a recall of his third strike sentence because his four strike convictions followed a plea bargain that pre-dated enactment of the Three Strikes law, and he “never

¹ Statutory references are to the Penal Code unless otherwise indicated.

agreed, or was made aware” at the time he entered the pleas “that a future offense could or would be used against him to strike him out under any kind of future legislation [the Three Strikes law].”²

On April 20, 2020, the trial court summarily denied the petition by minute order, stating in pertinent part that Jackson “is not claiming that he entered into an agreement with a limiting provision that violates section 1016.8. Rather, he contends that he was not aware of the consequences of his agreement under the Three Strikes law – a contention that he previously has raised or could have raised more than 20 years ago when he was charged in this case or in the intervening 20 years during his successive collateral attacks.”

Jackson filed a timely notice of appeal, and this court appointed counsel for him. After examination of the record, counsel filed an opening brief raising no issues and asking this court to follow the procedures set forth in *People v. Serrano* (2012) 211 Cal.App.4th 496 (*Serrano*). On September 16, 2020, we sent a letter to Jackson and his appointed counsel, advising Jackson that within 30 days he could personally submit any contentions or issues he wanted us to consider, and directing counsel to send the record and opening brief to Jackson immediately. Jackson timely filed a supplemental brief, raising the contention set forth below.

² Jackson’s four strike convictions were from 1982. California’s Three Strikes law became effective in 1994. (*People v. Anderson* (1995) 35 Cal.App.4th 587, 590; *People v. Reed* (1995) 33 Cal.App.4th 1608, 1610, fn. 2.)

DISCUSSION

Because Jackson’s appeal is not his first appeal of right from his conviction, he is not entitled to our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 or its federal constitutional counterpart, *Anders v. California* (1967) 386 U.S. 738. (See *People v. Kelly* (2006) 40 Cal.4th 106, 119; *Serrano, supra*, 211 Cal.App.4th at p. 503; *Pennsylvania v. Finley* (1987) 481 U.S. 551, 559.)³ He is entitled, however, to file a supplemental brief—which he has done here—and to our review of his contentions. (See *Serrano*, at p. 503; cf., *Ben C., supra*, 40 Cal.4th at p. 544, fn. 6; *Ben C.*, at pp. 554–555 (dis. opn. of George, C. J.).)

In his supplemental brief, Jackson argues his third strike sentence must be recalled pursuant to section 1016.8 and case law because his plea bargain in the 1982 case (resulting in the four strike convictions) was not knowing, intelligent, or voluntary, as he did not know in 1982 when he entered the pleas that those convictions could be used to increase his punishment in a future criminal case under the Three Strikes law later enacted in 1994.

As set forth above, section 1016.8 states that a plea bargain that waives “unknown future benefits” in the law is not knowing

³ Under *Serrano*, in a criminal appeal in which *Wende* does not apply, counsel who finds no arguable issues is still required to (1) inform the court that counsel has found no arguable issues to be pursued on appeal; (2) file a brief setting out the applicable facts and law; (3) provide a copy of the brief to appellant; and (4) inform the appellant of the right to file a supplemental brief. (*Serrano, supra*, 211 Cal.App.4th at p. 503, citing *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 544 (*Ben C.*).)

and intelligent. (§ 1016.8, subd. (a)(4).) Enactment of the Three Strikes law did not provide a “benefit” (e.g., a reduction in punishment) to criminal defendants. Thus, because Jackson could receive no benefit from the Three Strikes law, section 1016.8 is inapplicable to his contention that his third strike sentence is invalid because his prior plea bargain (resulting in the strike convictions) was not knowing, intelligent, or voluntary.⁴ His contention also fails under case law, which provides that a conviction after a guilty plea that pre-dates enactment of the Three Strikes law may be used as a strike under the Three Strikes law. (See *People v. Gipson* (2004) 117 Cal.App.4th 1065, 1068-1070; *People v. Sipe* (1995) 36 Cal.App.4th 468, 475, 478-479; see also *Doe v. Harris* (2013) 57 Cal.4th 64, 66 [a plea agreement does not insulate the parties “from changes in the law that the Legislature has intended to apply to them”].)

We are satisfied that Jackson’s counsel has fully complied with his responsibilities. (See *Serrano, supra*, 211 Cal.App.4th at p. 503.) Based on our review of the record, the applicable law, and Jackson’s supplemental brief, we conclude there is no arguable issue and, for the reasons set forth above, affirm the order denying the petition for writ of habeas corpus.

⁴ Moreover, section 1016.8 does not authorize a collateral attack on a final judgment. The “law ‘applies retroactively to all cases not yet final on appeal.’” (*People v. Barton* (2020) 52 Cal.App.5th 1145, 1153.) The 1999 judgment Jackson challenges in this appeal has long been final.

DISPOSITION

The April 20, 2020 order denying Jackson's petition for writ of habeas corpus is affirmed.

NOT TO BE PUBLISHED

CHANNEY, J.

We concur:

ROTHSCHILD, P. J.

FEDERMAN, J.*

* Judge of the Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.